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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

Illinois Franchise Tax Law Unconstitutional as to Foreign Corporations

The Supreme Court of Illinois, in a decision handed down on December 23, 1926, in the case of O'Gara Coal Company v. Emmerson, holds the Illinois Franchise Tax Law unconstitutional as to foreign corporations because (1) it is based on the proportion of authorized capital stock of foreign corporations and (2) because in determining the proportion of authorized capital stock employed in Illinois, intangible property, in and out of the state, is not considered. The Court sustains that part of the Act providing for a minimum tax based directly on the authorized capital stock. Twelve other foreign corporations joined in the suit.



President.

TO ALL THE USUAL QUALIFICATIONS OF A TRUST COMPANY, THE CORPORATION TRUST COMPANY, IN ACTING AS TRUSTEE, CUSTODIAN OF SECURITIES, ESCROW DEPOSITARY, DEPOSITARY FOR REORGANIZATION COMMITTEES, OR DIVIDEND DISBURSING AGENT, ADDS THE FRUITS OF ITS LONG AND INTIMATE EXPERIENCE WITH CORPORATE MATTERS AND ITS RESULTANT UNDERSTANDING OF CORPORATE NEEDS.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost (\$2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

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Having offices and representatives in every state and territory of the United States and every province of Canada and a large, trained organization at Washington, this company —

—furnishes attorneys with complete, up to date information and precedents for drafting all papers for incorporation or qualification in any jurisdiction;

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—furnishes, under attorney's direction, the statutory office or agent required for either domestic or foreign corporation in any jurisdiction;

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—naturally (as a result of the great organization and facilities thus maintained) and necessarily (because of the important functions it performs for lawyers) keeps constantly informed of the official matters—legislation, court decisions, and the rulings and regulations of various governmental bodies—which relate to taxation, transfers of securities, regulation of business activities, etc., and furnishes such information, where desired, on an annual basis in the form of the following Services:—

The Federal Tax Service
Corporation Tax Service, State and Local
New York Tax Service
Congressional Legislative Service
Federal Reserve Act Service
Supreme Court Service
Federal Trade Commission Service
Stock Transfer Guide and Service

Mitchell Sanguine on 1927 Outlook

Twelve business and banking leaders were asked by the Associated Press for their opinions on conditions at the close of the year, among them Charles E. Mitchell, President of the National City Bank of New York and a Director of The Corporation Trust Company. Mr. Mitchell's analysis of the situation and the outlook for 1927, as published in the press, is reproduced herewith:

"The year 1926 has been one of comparative stability in banking. For over a decade the financial world has been tossed about in a sea of alternating inflation and deflation caused by war and great shifts of gold on a scale heretofore unheard of. Gradually the effects of the war are clearing away and banking conditions the world over are getting back more nearly to normal.

"In this country, commercial demands have shown a healthy expansion during the past year, in keeping with the activity of industry, but there is no evidence of borrowing to excess. In fact, the conspicuous feature of the present situation has been the ability of financial concerns to finance themselves with comparatively little recourse to bank credit.

"Such increases as have occurred in commercial borrowing have been offset in part by a decline in bank investments and security loans, so that the year closes with but a moderate advance in total bank credit outstanding over the levels prevailing at the beginning of the year.

"Concern has been expressed in some quarters over the present large holdings of banks of securities and collateral loans which are ineligible for rediscount or pledge at the Reserve Banks. The expansion of these holdings in recent years has been due largely to the fact that gold imports have caused supplies of funds to increase faster than they could be absorbed in the ordinary commercial channels, so that banks have had no other alternative than their employment in the security markets.

"The problem of maintaining liquidity should engage the attention of all bankers, but there is no evidence that the banking position thus far has been impaired. If we do not get any more gold the savings of the country will gradually absorb this large floating supply of securities and banks will increase their holdings of commercial paper.

"Despite the large amount of funds employed in the security markets, growth of instalment credit and other demands upon the banks, the important thing to note is that the total volume of credit required of the Reserve Banks is less than

that of a year ago. The country is thus carrying on its business without drawing upon its ultimate banking reserves, a fact that speaks strongly for the underlying soundness of the credit situation.

"With the resources of the Reserve Banks practically untouched, money conditions continue easy, with no prospect of strain. What the trend of rates will bring during the coming year depends, in the last analysis upon the course of business. No one expects anything in the nature of tight money, but it is true also that aside from such temporary seasonal easing as always occurs in

January no large reductions are likely so long as business holds up to current levels.

"It should be remembered that demands for capital have increased very rapidly during the past five years, and that heretofore they have been met, with funds to spare, largely because of the replenishment of our bank reserves through gold imports. With the probability that the period of large gold imports is now over, we can hardly expect to enjoy indefinitely the unusual combination of high business activity and abnormally low money rates."

Domestic Corporations

Arkansas.

Corporate name. The Supreme Court of Arkansas says that in respect to corporate names the same rule applies as to the names of firms or persons, and an injunction lies to restrain the use by one corporation or firm of the name of a prior corporation, which tends to create confusion, and to enable the later corporation or firm to obtain, by reason of the similarity of names, the business of the prior one. It has been held that although the trade-name may not be mentioned in the sale of a business taken over as a going concern, a deed conveying trade-marks, patent rights, trade rights, good will, property, and assets of every name and nature is broad enough to include the trade-name under which the vendor corporation and its predecessors had achieved a reputation. The principle of the cases upon the subject of enjoining a person from using the trade-name of another person or corporation proceeds upon the theory that it is a fraud on a person or corporation, which has established a trade-name and carries on its business under that name, that some other person or corporation should assume the same name, or the same name with a slight alteration, in such a way as to induce persons to deal with him or it in the belief that they are dealing with a person or corporation which has given a reputation to the name. In the instant case it appeared that the printed stationery of the Terry Abstract Company was used, but a rubber stamp was affixed making the letter head read "Chickasawba Abstract & Investment Co., Inc., Successor to the Terry Abstract Co."

The court says that the use of the words "Successor to" would notify those receiving letters that the new corporation had purchased the business of the old and would thereafter carry on the business under its new corporate name. The testimony does not show that any confusion resulted except in very few instances and these instances were not numerous enough or sufficiently continuous to warrant an injunction in the matter. *Terry v. Cooper*, 286 S. W. 806. T. J. Crowder, of Blytheville, and George Vaughan, of Little Rock, for appellant. Reid & Campbell, of Blytheville, for appellee.

Iowa.

Heirs of deceased stockholder held not liable for assessment. In a suit to recover from the heirs of a deceased stockholder, the amount of an assessment upon the stock, one of the questions presented was whether the defendants were stockholders in the insolvent bank. It appeared that no administration had been taken out upon the estate. The Supreme Court of Iowa in holding the heirs not liable for the assessment says that if administration had been taken out the legal title would have been in the administrator during the five years allowed for taking out original administration, and the defendants would have no title to stock on which they could have maintained an action concerning it and would have no right to it as against the administrator. The evidence is that the officers knew that no administration had been taken out on the estate, knew that the only way an assessment could be collected was by the appointment of a receiver and a suit in equity, and that a claim against an estate could be enforced only by the appointment of an administrator and filing claim. The five years for taking out administration did not expire until December 15, 1924. The lapse of the periods fixed for order of right to make application for letters was no obstacle to an appointment of an administrator by the court. There were no equitable circumstances excusing the real claimants from proceeding in the regular way for administration of the estate and filing and establishing their claim. Therefore no liability of the defendants for the assessment is established. The court further says that there is no evidence that they ever claimed any rights, assumed any obligations, or held themselves out as stockholders, claimed to own the stock, or secured any personal benefit from the dividends, or even that they were understood by the bank or its officers as being stockholders or were recognized or accepted as such. *Andrew v. Dunn et al.*, 210 N. W. 425. Ben J. Gibson, Atty. Gen., and E. A. Anderson and J. A. Penick, both of Chariton, for appellant. Bracewell, Murrow & Poston, of Corydon, for appellees.

Nevada.

Acting secretary held not entitled to recover for services. This action is instituted to recover for services rendered as acting secretary and treasurer of the Reorganized Divide Annex Mining Co. It appeared that the president of the corporation hired the plaintiff stating that he was to act as secretary of the corporation and to look after the interests

of the president. The fact that the plaintiff had been employed was never brought to the attention of the board of directors. It appeared that the president owned some 298,000 shares of stock and that other individuals owned 154,000. The Supreme Court of Nevada in holding that no recovery could be had says that it is a well-recognized rule that no combination of stockholders of a corporation less than all will be permitted to manage or control a company in their interests alone. This is equally true of an individual stockholder. Since the president acted for his own personal interest alone, it cannot be assumed that he brought the facts of the case to the attention of the board of directors and there being no proof that he did, there can be no presumption of ratification of the employment by the company. *Sirbeck v. Reorganized Divide Annex Mining Co.*, 250 Pac. 245. *Ryland G. Taylor, of Tonopah, for appellant. J. A. Houlahan, of Goldfield, and Wm. Forman, of Tonopah, for respondent.*

New Jersey.

Authority of officer or agent to bind a corporation. To bind a corporation by the act of an officer or agent it must be shown that such officer or agent had the power to do the act conferred upon him by the charter, by-laws, or corporate action of its stockholders or board of directors of the corporation, or that the power to do the act can be implied from the powers expressly conferred or which are incidental thereto, or that the act is within the apparent powers which the corporation has caused those with whom the officer or agent has dealt to believe the corporation has conferred upon the officer or agent. The Court of Errors and Appeals of New Jersey in addition to the above says that as no power of any kind had been expressly conferred in such manner, no power could be implied. The act of the agent was not within the apparent powers which the corporation had caused those with whom he had dealt to believe had been conferred upon him because he was a bookkeeper and not an officer, and the only time he had signed an agreement was when he had been expressly authorized to do so. *Savoy Silk Mfg. Co. v. Royal Piece Dye Works*, 134 Atl. 663. *Stein & Stein, of Paterson (Benj. L. Stein, of Paterson, of counsel), for appellant. Wayne Dumont, of Paterson (William V. Rosenkrans, of Paterson, of counsel), for respondent.*

New York.

Martin Act held constitutional. This action is brought by one engaged in selling various kinds of negotiable securities to restrain the Attorney General from examining him and his books under a subpoena and order which had been issued under the provisions of the Martin Law, popularly described as the "Blue Sky Law," the action being based on the theory that the statute is unconstitutional and void. Some of the objections urged as to the validity of the law are that it confers upon the Attorney General judicial powers; it denies to a person subjected to subpoena or order the benefit of that due process of law

conferred by the Federal and State Constitutions; compels a person to be a witness against himself for purposes of a criminal prosecution. The New York Court of Appeals in upholding the validity of the Act says that it does not seem that the statute when fairly interpreted furnishes a basis upon which may be successfully rested any of these contentions. The court further says that the Attorney General as an executive official of the State is given the power by appropriate injunctive action to restrain any person who is engaged or who is about to engage in the business of selling the securities and commodities designated in the statute by means and aid of fraudulent methods and practices which likewise are therein defined. But the attempts to discharge the duty in a given case without any adequate and accurate knowledge of the facts might result either in an ineffective and abortive attempt or in the unjust prosecution of persons who were guilty of no offense or violation. Therefore the Attorney General as an administrative official charged with the duty of enforcing the statute is given the power to secure from a person whom he suspects of violation of the statute by means of questionnaire, oral examination and inspection of books, under conditions of absolute secrecy, the information which will enable him to determine whether the foundation does exist for further proceedings and information in a prosecution authorized by the statute. *Dunham v. Ottinger*. (Not yet officially reported.) Joseph W. Spencer, of New York City, for appellant. Keyes Winter, of New York City, for respondent. Louis Marshall, of New York City, for intervenor.

North Carolina.

Corporation held bound by action at stockholders' meeting authorizing employment of auditors. This action was brought to recover for services rendered in auditing and reporting the condition of the business of the Rex Spinning Company. One of the contentions advanced by the company against payment was that the resolution purporting to authorize the employment was not adopted or approved by the directors, but by the stockholders, in a meeting at which all the stockholders were not present or represented. The Supreme Court of North Carolina, in answer to this says that pursuant to the resolution adopted by the stockholders in their regular annual meeting, the auditors were employed to audit the company's books; they made a detailed audit covering a certain period; they presented and explained their audit to the stockholders in a meeting subsequently held upon notice duly given; and their report was "accepted as information" by the stockholders. With the resolution upon the minutes, this appropriation of the audit was a recognition of the alleged agreement; it was a ratification by the stockholders, even if the directors had not authorized the committee to act in the premises. As the contract was not ultra vires, it was not beyond the power of corporate ratification. By subsequent recognition it became as effectual and binding as if the committee had had undisputed power to bind the company; this on the principle that the company could not accept the benefit of the report and repudiate the agreement

under which the report was made, or profit by the agreement and repudiate the authority of the agent by whom it was made. The ratification of an act by one who assumes to be an agent relates back, and is equivalent to a prior authority. The absence of some of the stockholders did not impair the force of the resolution. It has been held that, if an act is to be done by an incorporated body, the law, resolution, or ordinance authorizing it to be done is valid if passed by a majority of those present at a legal meeting. *Respass et al. v. Rex Spinning Co.*, 133 S. E. 391. *Hugh M. McAulay and Stewart, McRae & Bobbitt*, all of Charlotte, for appellant. *Cansler & Cansler and John M. Robinson*, all of Charlotte, for appellees.

North Dakota.

Pledge of unissued stock. In an action to compel the transfer of certain corporate stock, the Supreme Court of North Dakota holds that a pledge of unissued stock by a corporation to a person as security for a debt, representing labor done, services rendered and expense money violates both the State Constitution and the statute providing that no corporation shall issue stocks or bonds except for money, labor done or money or property actually received, and a creditor of a corporation who obtains a pledge of such stock as security for his claim has no right or title therein or lien thereon, the same being illegally issued and void. One to whom such stock is transferred with full knowledge of the circumstances under which it was pledged by the corporation to the transferor has no better title than the original pledgee, and cannot maintain an action against the corporation or its officers to compel transfer of such stock upon the corporate books. The court further says that as a general rule, even where the corporation has power to do so, the secretary or other officer or agent of a corporation has no power to pledge any portion of its corporate stock as security for a debt of the corporation, unless he is specially authorized to do so by a vote or resolution of the board of directors or stockholders, or unless such authority arises by reasonable implication. *McAndrews v. Idawa Gold Mining Co. et al.*, 210 N. W. 514. *B. H. Bradford and Nestos, Herigstad & Stenersen*, all of Minot, for appellants. *U. L. Burdick, of Fargo, and Clyde Duffy, of Devils Lake*, for respondent.

Ohio.

Effect of cancellation of articles of incorporation on indebtedness. A domestic corporation on February 15, 1924, had been in default for a period of more than 90 days for annual report and payment of franchise tax, and on that date the secretary of state, by virtue of a statute cancelled its articles of incorporation by entry upon the margin of the record thereof in his office, and immediately notified the corporation of the action taken by him. On that date the corporation was indebted to certain persons upon contracts executed prior thereto, and after that date, and within a period of two years thereafter, and before reinstatement.

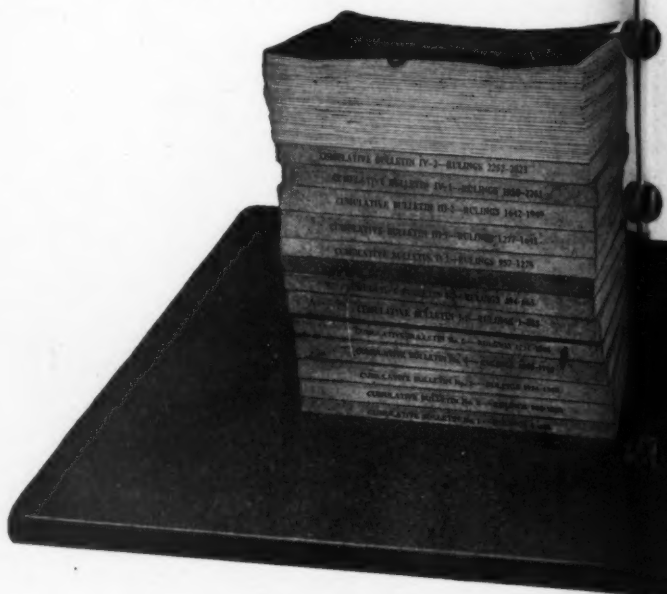
ment of the corporation under the statute, the corporation entered into contracts for labor and materials which entered into buildings upon real estate of the corporation and executed mortgages in favor of persons lending money to the corporation. Under the above statement of facts the Supreme Court of Ohio holds that the transactions of the corporation after February 15, 1924, were not void and that mechanics' liens obtained for labor and material thereafter furnished, and mortgages upon real estate executed by the corporation thereafter are valid liens, and entitled to payment prior to the claims of general creditors existing before February 15, 1924. *Eversman v. Ray Shipman Co. et al.*, 152 N. E. 643. *Roettinger & Street, of Cincinnati, and Andrews, Andrews & Rogers, of Hamilton, for plaintiff in error. J. Arthur Meyer, of Cincinnati, Fitton & Beeler, Williams & Sohngen, M. O. Burns, Walton S. Bowers, C. F. Antenen, W. C. Shepherd, Koehler & Korner, John F. Neilan, and Shotts & Millikin, all of Hamilton, and Cobb, Howard & Bailey, of Cincinnati, for defendants in error. Booth, Keating, Pomerene & Boulger, of Columbus, amici curiae.*

West Virginia.

Powers of president and general manager. In connection with the powers of the president and general manager of a corporation, the Supreme Court of Appeals of West Virginia says that the president of a corporation has no inherent power to make contracts on its behalf, and that the implied authority of a general manager of a corporation extends only to such matters as come within the scope of its ordinary business. The court further says that to estop a corporation by its conduct from denying the authority of its officers or agents, the one seeking to enforce the estoppel must show that he was misled to his injury by the words, acts, or conduct of the other party, while ignorant of his own rights and without knowledge of the facts. *Kelly Convertible Wagon Co. v. Rhodes Mfg. Co. et al.*, 135 S. E. 242. *T. W. Peyton and E. L. Hogsett, both of Huntington, for appellants. J. M. Rigg, of Huntington, for appellee.*

Formation of corporation to take over assets and liabilities of partnership. Blue Sky Law. In 1920, the equal partners of a lumber operation organized a corporation, the stockholders being the partners and their wives. The partners then traded the assets of the partnership, subject to its liabilities, to the corporation for its stock. Some time thereafter the corporation became insolvent and some of the creditors brought this suit to hold the partners personally liable. The lower court found that the sale of the partnership assets to the corporation and the issuance of paid up stock was a fraud on subsequent creditors and held the partners personally liable. Further that there was no compliance with the Blue Sky Law. The Supreme Court of Appeals of West Virginia in reversing the decree says that no fraud was proven and that under the statute no payment in money on stock is required, and that where full-paid stock is issued for property received, actual fraud must appear in the transaction, to enable creditors of the corporation to hold

Completeness, of course



A part, and an extremely important part, of The Federal Tax Service of The Corporation Trust Company is the file of Semi-Annual Cumulative Bulletins of the Internal Revenue Bureau and the current Weekly Bulletins as issued. Each subscriber to this Service receives these Bulletins and the information they contain is linked up by the Cumulative Index with all related matters in the Service proper.

No Federal Tax Service could be a COMPLETE service without these Bulletins and no taxpayer could be sure of having all the information essential to the deciding of any Federal tax question without access to them.

Yet, even though the Bulletins add thousands of pages to the Federal Tax Service, not a whit of inconvenience or

out Convenience as well



trouble is caused the individual subscriber. He does not have to read through any matter in the Bulletins, in fact does not even have to turn to them, except as he learns from the Cumulative Index of matter having a direct bearing on the subject he is then investigating—and then, from the Cumulative Index reference, he is able to turn directly to the one or more rulings of interest.

Because The Federal Tax Service is COMPLETE, and because its Cumulative Index, always up to date, prevents missing a single point of importance, no matter how old or how new, the subscriber knows that he will find ALL THE OFFICIAL INFORMATION THERE IS when he consults this Service.

the stockholders liable. Further that the Blue Sky Law has no application to the transfer of property to a corporation for stock. In answer to the contention that the corporate organization was invalid, the court says that when one knowingly contracts with a corporation as such, he will not afterwards be heard to deny its corporate identity, and when a legally organized corporation takes over the business of a partnership, the partners are not liable to subsequent creditors of the corporation, who deal with it as such. *Fayette Wholesale Grocery Co. et al. v. Brown Bros. et al.*, 135 S. E. 235. *Dillon & Mahan, of Fayetteville, for appellants Brown. Osenton & Lee and C. R. Summerfield, all of Fayetteville, for appellees Bigford, Radford, Radford & Bigford, and Abbot.*

Foreign Corporations

Alabama.

Admission of contract executed by unqualified foreign corporation in action to recover property. This is an action of detinue by the Minerals Separation North American Corporation, a foreign corporation against Pocahontas Graphite Company, for one 18-inch 10-cell Mineral Separation flotation machine, and for one 12-inch 10-cell Mineral Separation flotation machine, with the value of hire or use thereof during the detention. The evidence shows that when the contract pertaining to the machinery was executed, the property and the parties were in Alabama, and the property was in possession of the defendant; that plaintiff was and is a foreign corporation and was not qualified to do business in Alabama because it had not complied with the statutory requirements. It was insisted this rendered the contract void and inadmissible as evidence in this cause. The Supreme Court of Alabama in connection with this says that this may have rendered the contract void but still it was admissible as evidence. It contained competent evidence. It contained a written declaration by the defendant that this property was owned by the plaintiff and not by the defendant; that the plaintiff was lessor and the defendant the lessee; and that defendant could purchase it from the plaintiff. The defendant thereby, in writing, admitted the title to the machines was in the plaintiff, which was a vital issue between the parties in this action. *Pocahontas Graphite Co. v. Minerals Separation North American Corporation*, 109 So. 873. *Coleman, Coleman, Spain & Stewart, of Birmingham, for appellant. James W. Strother, of Dadeville, for appellee.*

Massachusetts.

Service of summons of foreign corporation. In an action against the Aluminum Co. of America, it was contended that the court was without jurisdiction to entertain a suit brought under the Clayton Act because the corporation was never found in the district of Massachusetts. It appeared that the company, a Pennsylvania corporation had its prin-

cial place of business in Pittsburgh. For some time prior to the suit it maintained an office in Boston known as the New England District Sales Office. The office force consisted of a district sales manager, an assistant district sales manager, a local sales manager, eight salesmen, and seven stenographers, nearly all of whom resided in Massachusetts and made the office their headquarters. It was the duty of these employees to solicit orders from persons resident in the New England states, except Connecticut. No bank account was kept in Massachusetts, but rent and salaries were paid by check from Pittsburgh and office expenses were paid by the district manager or his subordinates out of funds advanced by the company, deposited in the name of the employee receiving the advance. Orders received were transcribed on blank forms, of which the original and two copies were sent to Pittsburgh, and one copy kept in Boston. The order would be acknowledged from Boston, and correspondence with the customers was carried on relating to the prices, dates of shipment, etc. Payment for goods purchased by customers of the New England district was made to the Pittsburgh office. Under section 12 of the Clayton Act, any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business. The United States District Court (Massachusetts) in holding the service good says that the activities carried on by the company through its New England district sales office constituted the carrying on of business in Massachusetts to such an extent, and were of such a nature, that it must be held that the corporation was "found" within the district of Massachusetts and under the express terms of section 12, process could be served upon the corporation in Massachusetts. Further that the service upon the New England district manager, answers the requirements of the Massachusetts laws relating to service upon foreign corporations. *Haskell v. Aluminum Co. of America et al.*, 14 F. (2d) 864. *Sherman L. Whipple and Edward C. Park*, both of Boston, for plaintiff. *Charles E. Hughes*, of New York City, and *Edward F. McClennen*, of Boston, for defendant *Aluminum Co. of America*.

West Virginia.

Foreign corporation financing purchase of motor vehicles by local distributors and dealers, not "doing business." A foreign corporation, financing the purchase of motor vehicles by distributors and dealers in West Virginia through loans, secured by title to the vehicles, granted and consummated at its branch offices outside the state, is not "doing business" in West Virginia, within the meaning of the statute, although the loans are secured and collected through the local banks of the purchasers under directions from the corporation. The instant case involved the General Motors Acceptance Corporation, a New York corporation. It appeared that the corporation maintained branch offices in various places outside West Virginia, furnishing financial assistance to approved distributors and dealers in West Virginia and

other states in the purchase of motor vehicles manufactured by the General Motors Corporation. The Supreme Court of Appeals of West Virginia, in addition to the above, further says that the collection in West Virginia by a foreign corporation of debts due it for goods sold or otherwise contracted does not constitute doing, transacting, carrying on, or engaging in business within the meaning of the statute under consideration; nor does the acceptance in the state of evidence of such debts, or the taking of security therefor, come within the meaning of the statute. *General Motors Acceptance Corporation v. Shadyside Coal Co.*, 135 S. E. 272. W. F. Keefer, of Wheeling, for plaintiff in error. George A. Blackford, of Wheeling, for defendant in error.

Taxation

Massachusetts.

Excise tax on foreign corporation. The Supreme Judicial Court of Massachusetts, says in an action for abatement and repayment of an excise tax, that the company, being a foreign corporation engaged exclusively in interstate commerce within the commonwealth, was not subject to the excise tax imposed by the statute, but that since the petition for recovery must, under the statute be filed within six months after the payment of same, no recovery could be had, as the tax was paid October 18, 1924, and the petition was not filed until October 14, 1925, this limitation barring recovery. *Celluloid Co. v. Commonwealth*, 152 N. E. 237. Choate, Hall & Stewart, of Boston, for appellant. Jay R. Benton, Atty. Gen., and A. Lincoln, Asst. Atty. Gen., for the Commonwealth.

Federal Tax Matters

Outstanding features of a few of the many interesting rulings and decisions from November 20 to December 20, in The Federal Tax Service of The Corporation Trust Company are briefly summarized here. The complete reports should be examined to determine the extent of their application. These decisions and rulings, it must also be remembered, are not necessarily final. The citations are all to the above named Service.

A loss resulting from the sale of a private residence built by the taxpayer and occupied by him for about fourteen years, then rented for about nineteen years, and then sold, is not deductible as it is neither a business loss nor one incurred in a transaction entered into for profit

though not connected with a trade or business; so held by a United States District Court, Western District of Pennsylvania (Part 1, ¶4619). . . . The indiscriminate use of ownership certificate Form 1000 (tax to be withheld at the source) is not in accord with the

Regulations (Part 1, ¶4635). . . . United States Circuit Court of Appeals for the Third Circuit holds that a corporation which at all times held itself out to the Government to be such may not recover income and excess profits taxes paid over a period of years on the ground that certain of the income from the operations was not its income but the income of a partnership which in fact had title to coal land leaseholds from which the income was derived; also that a waiver must be actually filed with the Commissioner, depositing in post office not being sufficient (Part 1, ¶4641). . . . The United States District Court for the Northern District of Ohio, Eastern Division, finds that the lessee of improved realty (leases: 99-year term, renewable perpetually, acquired since February 28, 1913, on annual rental basis—no bonus) is not entitled to a deduction on account of depreciation of the buildings (in addition to deductions allowed on account of annual rental, repairs, and maintenance), when, as here, such buildings represent no capital investment by the lessee (Part 1, ¶4643). . . . Dividends impounded by court order in the treasury of the paying company (suits by Alien Property Custodian, as stockholder, pending) represent taxable income of the trust (the impounding, declaring company—to the extent of the impounded dividends) rather than of the stockholder to whom the impounded money is ultimately paid over on dismissal of the suits, and, in any event, the dividends would not be taxable to the distributee as of the year of receipt of the money but as of the respective years of the impounding; United States District Court decision; District of

New Jersey (Part 1, ¶4652). . . . The District Court for the District of New Jersey held also that an amount of local tax paid by election by a New Jersey trust company on its share-stock is deductible by the company under the 1916-1917 Act (Part 1, ¶4659). . . . An order was granted by the United States District Court, Western District of Washington, Northern Division, requiring a Seattle national bank to produce its register of drafts over a period of years for examination by internal revenue agents (Part 1, ¶4663). . . . The Court of Appeals of the District of Columbia reverses a judgment dismissing petition for writ of mandamus to require the Board of Tax Appeals to take jurisdiction of taxpayer's appeal from Commissioner's deficiency determination.—A letter from the Commissioner asserting that "after a careful review of your protest * * * your case is, therefore, deemed closed" is more than "a courteous reply to the protest"; it is a "determination" establishing the date of the beginning of the sixty day appeal period (Part 1, ¶4668). . . . Some sixty Board of Tax Appeals decisions are reported in the course of a month (Part 1, "Board of Tax Appeals" division). . . . A valid distribution in kind upon dissolution without the recognition of gain or loss to the corporation was effected under the terms of a contract entered into between the corporation's stockholders and a second corporation which latter thereupon took over the assets from the trustees in liquidation. Taxable income was derived by the stockholders of the dissolved corporation to the extent that the amount received in liquidation exceeded the basis to them of their shares of stock in the second cor-

poration (Bull. V ('26)-46, p. 2). . . . Where the taxpayer defaulted in connection with his first and second installments of tax and the collector did not send notice and demand for payment of the balance of tax upon default, an extension of time may be granted for payment of the third and fourth installments, application for such extension having been made prior to the due date thereof (Bull. V ('26)-47, p. 4). . . . The plan put into effect by the O Bank created a trust as a part of a "stock bonus, pension, or profit-sharing plan" for the exclusive benefit of the employees who are subscribers thereto, within the meaning of section 219 (f) of the Revenue Act of 1926. The principal and income of the fund are, therefore, not taxable in the hands of the trustees, but any income or profit inuring to the employees as distributees of the fund is taxable to them for the year in which it is distributed or made available to them to the extent that it exceeds the amount paid in by them. As no part of the amounts contributed by the bank reverts to or is to be repaid to it, such amounts have the status of additional compensation paid for services, and, assuming that it will not result in an unreasonable amount as compensation for a particular year, the entire amount thereof is an allowable deduction to the bank from its gross income (Bull. V ('26)-48, p. 4). . . . Gains realized from liquidating dividends, in so far as they are not paid (1) from earnings or profits accumulated since February 28, 1913, or (2) from earnings or profits accumulated, or increase in value of property accrued, prior to March 1, 1913, are, at the election of a taxpayer who has held the stock with respect to which such liquidating

dividends are paid for more than two years, subject to the 12½ per cent tax limitation provided in section 206 of the 1921 Act (Bull. V ('26)-49, p. 6). . . .

As a person (here, a trust company) acting as an executor, administrator, "committee," guardian, or testamentary trustee is held (U. S. Court of Claims) not to be, by virtue of so acting and to that extent, an officer or employee of "any state," the fees and commissions received by the executor, etc., as such are not exempt from the tax on that ground (Part 2, Excess Profits Tax, ¶2679). . . . The Supreme Court of the United States holds that to the extent at least that the legal reserve of a mutual insurance company conducting its business on the level premium plan consists of contributions made (premiums paid) by the members the amount thereof is to be included in invested capital as "actual cash paid in" for "shares in such corporation" (Part 2, Excess Profits Tax, ¶2693). . . . Partial personal service classification is denied a certain commission merchant business by the Court of Claims (Part 2, Excess Profits Tax, ¶2702). . . . In view of the distinction between a contract of sale and one for work and materials it is held (by the United States District Court—Connecticut) that one engaged in the general automobile repair business who makes and fits to cars, among other things, side curtains, tops, slip covers, and carpets on special order of patrons, the charge being for the work done and incidentally for the materials furnished is not thereby "selling" parts or accessories within the intentment of the statute (Part 2, Excise Taxes, ¶4832).

Notes

Among the decisions handed down by the United States Supreme Court, Monday, November 22, were three of particular importance to a certain Buffalo attorney. He learned of the general nature of the decisions on Wednesday, just the day before Thanksgiving. He needed the full text. More than that, he had to have it Friday morning. He was in despair until one of his partners thought of calling on the Buffalo office of The Corporation Trust Company for assistance. Telephone communication between that office and the company's Washington office set in motion the machinery of this company's organization and on the afternoon of the next day—Thanksgiving—the full text of the three decisions was delivered to the lawyer's home, so his digests of them were ready for his argument Friday morning.

The Corporation Trust Company has been appointed transfer agent for the 200,000 shares of common stock without par value of Hutto Engineering Company, Inc. This is the company that makes the cylinder grinding machines used in most of the automobile plants of the country.

The Corporation Trust Company has been appointed transfer agent for Safe-Guard Check Writer Corporation, 100,000 shares without par value.

392 corporations were organized under the laws of Delaware from November 20 to December 20, as against 378 for the preceding 30-day period and 451 for the corresponding period of 1925.

Some Important Matters for January and February

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Fee for Permit to Do Business, due January 1—Foreign Corporations.

Annual Franchise Tax Return due between January 1, and March 15—Domestic and Foreign Corporation.

ALASKA—Annual Report due on or before March 1.—Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1—Domestic and Foreign Corporations.

- CALIFORNIA**—Annual License Tax due between January 1 and first Monday of February—Domestic and Foreign Corporations.
Capital Stock Affidavit due between January 1 and first Monday of February—Foreign Corporations.
Report on General Franchise due within 10 days after first Monday in March.—Domestic and Foreign Corporations.
- COLORADO**—Annual Report due within 60 days after January 1—Domestic and Foreign Corporations.
- CONNECTICUT**—Annual Report on or before February 15.—Domestic and Foreign Corporations.
- DELAWARE**—Annual Report due on or before first Tuesday in January—Domestic Corporations.
- DISTRICT OF COLUMBIA**—Annual Report due between January 1 and January 20—Domestic Corporations.
- GEORGIA**—Registration and Payment of License Tax due January 1. Delinquent April 30—Foreign Corporations.
- ILLINOIS**—Annual Report due between February 1 and March 1—Domestic and Foreign Corporations.
- INDIANA**—Annual Report due during January—Foreign Corporations.
Annual Capital Stock Report due on or before March 1—Foreign Corporations engaged in manufacturing.
- KANSAS**—Annual Report and Franchise Tax due between January 1 and March 31—Domestic and Foreign Corporations.
- KENTUCKY**—Annual Report due on or before February 1.—Domestic and Foreign Corporations.
- LOUISIANA**—Capital Stock Statement and Tax due on or before March 1—Foreign Corporations.
- MAINE**—Annual License Fee due on or before March 1—Foreign Corporations.
- MARYLAND**—Annual Report due between January 1 and March 15—Domestic and Foreign Corporations.
- MASSACHUSETTS**—Annual Report of information for income tax due between January 1 and March 1.—Domestic and Foreign Corporations.
- MISSOURI**—Annual Return of Net Income due between January 1 and March 15—Domestic and Foreign Corporations.
Annual Franchise Tax Report and Tax due on or before March 1—Domestic and Foreign Corporations.
- MONTANA**—Annual Report due between January 1 and March 1—Foreign Corporations.
Annual Return of Net income due between January 1 and March 1—Domestic and Foreign Corporations.
- NEW HAMPSHIRE**—Franchise Tax due between January 1 and March 1—Domestic Corporations.
- NEW YORK**—Annual Franchise Tax based on Income of Business Corporations due on or before January 1—Domestic and Foreign Business Corporations other than realty and holding companies.
Annual Franchise Tax payable on or before March 15—Domestic and Foreign Real Estate and Holding Corporations, Transportation and Transmission Companies, other than those subject to the so-called income tax.

Annual Franchise Tax Report, Real Estate Holding Corporations, Transportation and Transmission Companies due between January 1 and February 15—Domestic and Foreign Business Corporations. Form 42 C. T. Section 182 of the Tax Law.

NORTH CAROLINA—Income Tax return due on or before March 15—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return due between January 1 and March 1—Domestic and Foreign Corporations.

OHIO—Report to Industrial Commission due during January—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Report and Corporate Loan Report due between January 1 and February 28—Domestic and Foreign Corporations.

Bonus Report due between January 1 and February 28—Foreign Corporations.

RHODE ISLAND—Corporation Tax Return due on or before March 1—Domestic and Foreign Corporations.

Annual Report due during February—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31—Foreign Corporations.

Annual License Tax Report due during month of February—Domestic and Foreign Corporations.

Annual Income Tax return due on or before March 15—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due between January 1 and March 1—Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due between January 10 and March 15.—Domestic and Foreign Corporations.

TEXAS—Annual Capital Stock Report due between first day of January and the 15th day of March—Domestic and Foreign Corporations that are required to pay annual franchise tax.

UNITED STATES—Annual Return of Net Income due on or before March 15. Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—Annual License Tax Return due on or before March 1—Domestic and Foreign Corporations.

Annual License Tax payable on or before March 1—Domestic and Foreign Corporations.

Extension of Certificate of Authority due between January 1 and March 31—Foreign Corporations.

Annual Report due on or before March 1—Domestic Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1—Domestic Corporations.

WISCONSIN—Income Tax due on or before January 31—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

- What Constitutes Doing Business.** A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."
- Six Points to Watch in Incorporation.** A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.
- Two Notable Certificates of Incorporation.** Contains the certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.
- Safeguarding Stock Transfers.** Dealing with the many pitfalls in transferring stock on a corporation's books.
- Delaware Corporations.**—Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non-par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.
- Shares Without Par Value.** Explains some of the advantages of such shares and presents brief synopses of the statutory provisions for issue in the 39 states in which they are authorized.
- Paying Too Much in Taxes.** Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary.
- Corporation Laws of New York.** Contains the Stock Corporation Law, Business Corporations Law, provisions affecting Navigation Corporations, Omnibus Corporations, Sections of the Penal Laws, Blue Sky Law, Corporation Tax Law, Extracts from the Executive Law, and complete Index.
- When Doing Business Is Illegal.** A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.
- Revenue Act of 1926.** A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.
- New Jersey Corporations.** Text of the 1926 amendments permitting stockholders' meetings outside the state, and freeing stock of non-resident decedents (after July 1, 1926) from the state's inheritance tax.
- Transfer Requirements Chart.** This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.
- Lawyers' Preliminary Work Sheets.** Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference.

A Corporation's Vulnerable Point

When a corporation, through neglect to file some report or pay some tax or observe some other legal requirement of the state in which it is incorporated or any state in which it is qualified, loses its corporate standing in that state, it is putting itself in the way of vicious attacks by those with whom it has contracts or from whom it has money due if they should be disposed to take advantage of the opening.

Responsibility, experience, carefulness and facilities for systematic watchfulness of legislation, official regulations and court decisions affecting corporate welfare, are therefore essential points to look for in choosing a statutory representative in any state. The Corporation Trust Company's system of corporate representation covers every state and territory of the United States and every province of Canada with one centrally-controlled organization of trained experts. It is the organization chosen to represent the greatest, best managed corporations of America because it is the organization corporation lawyers of the most experience feel the greatest trust in.

If any client corporation of yours is risking its corporate standing in any state through untrained, inexperienced or irresponsible representation, we should be glad to prepare an estimate for you showing the small additional cost involved in placing the entire responsibility in the capable, sure hands of this organization. This company deals, in all such matters, only with counsel. Write or telephone our nearest office.

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May a business firm send collection letters in name of a fictitious collection agency?

Many business firms selling on credit or instalments are making regular use of just that type of collection letters. Is it legal? This is just one example of the many business practices and methods that the Federal Trade Commission is acting upon and by its decisions setting up precedents for the future. Can any business firm doing an interstate business, or the counsel for such a firm, afford to be out of intimate touch with the proceedings of such a government agency? The one practicable way to follow intelligently the course of the Commission is through The Corporation Trust Company's Federal Trade Commission Service. Send for particulars.

